

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554  
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FILED

JUL 21 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Toll Free Service Access Codes ) CC Docket No. 95-155

**COMMENTS**

Sprint Communications Company, L.P., hereby respectfully submits its further comments regarding the treatment of toll free vanity numbers in response to the Public Notice released July 2, 1997. In this Notice, the Commission has requested that parties refresh the record in the *Toll Free Service Access Codes* proceeding (10 FCC Rcd 13692 (1995)), and comment on topics such as a vanity number lottery and Standard Industrial Classification (SIC) Codes. Sprint opposes replication of toll free vanity numbers in any toll free SAC other than 888, a lottery of vanity numbers, and use of SIC codes to allocate vanity numbers. As discussed below, each of these approaches is seriously flawed and contrary to the public interest.

**1. Replication/Right of First Refusal.**

In the initial NPRM in this proceeding, Sprint, like many other parties, expressed serious concern that adoption of a "right of first refusal" policy<sup>1</sup> would lead to premature exhaust of subsequent toll free service access codes (SACs), would provide an undue advantage to incumbent toll free subscribers, and make it more difficult for new sub-

<sup>1</sup> Under this policy, existing toll free customers would be given the first option of subscribing to the equivalent 7-digit number in subsequent toll free service access codes.

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scribers to obtain certain “good” toll free numbers. However, Sprint also stated that if the percentage of 800 numbers subject to replication requests was fairly low, we would not oppose allowing 800 number assignees the right of first refusal for the equivalent 888 number. Although the actual percentage of replicated numbers turned out to be somewhat higher than projected by at least one toll free users’ group<sup>2</sup> -- 12% -- Sprint continues its cautious support for allowing existing 800 customers the right of first refusal out of deference for subscribers’ deeply held concerns on this issue.

However, Sprint does not believe that existing toll free service subscribers should have the right of first refusal for the equivalent number in the 877 or any subsequent toll free service access code. The circumstances surrounding introduction of subsequent toll free SACs are significantly different from those surrounding the introduction of the 888 toll free SAC, and these changed circumstances do not warrant extension of the right of first refusal approach.

First, consumers and subscribers are by now very familiar with the concept of multiple toll free SACs. Currently, the second toll free SAC, 888, has a subscription rate of approximately 54%, with over 4.3 million 888 numbers now in service. Because callers and subscribers no longer automatically equate “toll free service” with “800 service,” Sprint believes there will be substantially less confusion and resistance to use of additional toll free SACs, and that what confusion and resistance may exist will continue

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<sup>2</sup> The 800 Users Coalition estimated that the replication request rate would be about 6% of assigned 800 numbers (comments filed November 1, 1995).

to decrease as more and more toll free numbers in different SACs are deployed.<sup>3</sup> As callers become more accustomed to toll free numbers in multiple SACs, it becomes less likely that they will resist dialing numbers in a new SAC or that they will automatically assume that the seven-digit code in every toll free SAC will terminate to the subscriber of that number in the 800 SAC. Therefore, from a customer confusion perspective, there is no need to allow existing toll free subscribers the right of first refusal of the corresponding number in the 877 or any subsequent SAC.

Second, a right of first refusal policy becomes increasingly difficult to administer in a multi-SAC environment. For example, today the same 7-digit number may be assigned to two different subscribers – one in the 800 SAC and one in the 888 SAC. As additional toll free SACs are implemented, determining which subscriber is entitled to the right of first refusal would become more and more complicated as the number of subscribers involved increases.

Third, as noted above, replication inevitably contributes to code exhaust and underutilization of a valuable public resource if a customer replicates a number to prevent another party from using it so as to better protect itself against fraud or customer confusion. Allowing replication in each toll free SAC which is implemented will only increase the total quantity of toll free numbers which are withheld from active and productive use.

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<sup>3</sup> Indeed, given the amount of time that has elapsed since the 888 SAC was implemented, and the increasingly widespread recognition of the 888 code among toll free callers, it is possible that many 800 customers who requested that their 7-digit number be replicated will choose to not exercise their right of first refusal.

Implementing additional toll free SACs is an extremely costly and complicated undertaking, and allowing existing customers the right of first refusal hastens the date by which a new SAC must be introduced. The Commission went to considerable lengths to adopt measures which maximize the quantity of toll free numbers available for active use,<sup>4</sup> and allowing replication in future SACs will only work against these other measures.

## **2. Vanity Number Lotteries.**

Although the Commission has solicited comment on the use of a lottery to allocate toll free vanity numbers, it is not clear precisely what kind of lottery the Commission has in mind. As a general matter, however, Sprint opposes the use of lotteries and believes that their use is contrary to the public interest for several reasons.

First, lotteries are likely to encourage hoarding and brokering. If a number is available only through a one-time lottery, entities which may have no immediate use or need for that number might bid for it to help ensure that it would be available for future use. Other entities might bid for a number with a view towards brokering it. And, a winning bidder might view the number as its personal asset,<sup>5</sup> making it more difficult for

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<sup>4</sup> For example, in the *Second Report and Order* in this proceeding (released April 11, 1997), the Commission required RespOrgs to certify that they have a subscriber for each toll free number they reserve; imposed a cap on the quantity of numbers each RespOrg may reserve; reduced lag times; and prohibited hoarding, warehousing and brokering of toll free numbers.

<sup>5</sup> In the *Second Report and Order* (para. 32), the Commission reaffirmed the well-established policy that toll free numbers are a public resource whose use does not confer ownership.

a RespOrg to take the number back in the event violations of the Commission's Rules occur.

Second, use of lotteries could have an adverse impact on subscribers relative to their competitors who have already obtained a toll free number at zero or minimal cost. An entity which is required to pay some (potentially significant) sum to obtain a toll free number would be at a financial disadvantage compared to a competitor who managed to secure a toll free number prior to implementation of a lottery system.

Third, lotteries may discourage potential customers from subscribing to toll free service at all. Potential subscribers may conclude that toll free service is no longer attractive given the cost of bidding for a number or the additional effort required to secure a particular number. Of course, in any lottery which is based on dollar bids, entities with the deepest pockets are most likely to secure a vanity number. This could result in underutilization of a toll free code if the winning bidder "purchases" the number not for the purpose of using it productively, but rather to prevent some other entity from using it (*e.g.*, to minimize customer misdials).

### **3. Use of Standard Industrial Classification Codes.**

In its original NPRM (paras. 44-45), the Commission solicited comment on a proposal to bar any competitor of the current holder of a toll free number from obtaining the equivalent 7-digit number in another toll free SAC, and the use of standard industrial classification (SIC) codes to identify competitors. As the instant Public Notice did not set forth specific questions regarding use of SIC codes, Sprint assumes that the Commission is here soliciting comment on its original proposal.

In its comments in response to the original NPRM, Sprint described the enormous practical difficulties associated with use of SIC codes, and questioned the need for this type of protection given existing trademark law (which prohibits the holder of a toll free number from falsely or misleadingly connoting to the public an affiliation with the holder of the trademark or service mark).<sup>6</sup> Nothing has changed in the past two years which would support use of SIC codes to bar competitors of the current holder of a toll free number from obtaining the equivalent 7-digit number in another toll free SAC. To the contrary, the fact that there now may be two different subscribers (in two different industries) to the same 7-digit toll free number, one in the 800 SAC and one in the 888 SAC, only makes use of SIC codes more complicated and inefficient, and further limits the pool of potential subscribers for any given 7-digit number.<sup>7</sup> Moreover, the SIC analysis would have to be performed every time a toll free number is requested; the database administrator (or whoever is performing the SIC analysis) cannot assume that a previous analysis is still valid since every time a toll free subscriber establishes or cancels service, the companies and industries involved will change. Finally, it will become increasingly difficult to classify a company in one SIC code or another as technologies converge (*e.g.*, cable companies which also provide telecommunications services). In short, the SIC code proposal is virtually unworkable, and should not be adopted.

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<sup>6</sup> See Sprint Comments filed November 1, 1995, pp. 21-22; Reply Comments filed November 20, 1995, p. 10.

<sup>7</sup> If the SIC code proposal were adopted, if a company in Industry A subscribes to 800-123-4567, and an unrelated company in Industry B subscribes to 888-123-4567,

*Footnote continued on next page*

#### **4. First Come, First Served.**

As shown above, each of the proposals for allocating toll free vanity numbers -- allowing right of first refusal/replication; lotteries; or restricted assignment based on SIC codes -- suffers from serious administrative or public policy deficiencies. Sprint accordingly recommends that the Commission adopt a "first come, first served" approach for allocating toll free numbers. This approach is a fair and reasonable allocation methodology which offers all potential subscribers an equal opportunity to secure a desired toll free number; it is straightforward, well understood by subscribers and service providers, and easy to administer. Sprint believes that this approach best comports with the public interest and therefore supports its adoption.

Respectfully submitted,

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July 21, 1997

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whatever entity administers the SIC code proposal would have to ensure that the potential subscriber of 877-123-4567 is neither in Industry A nor in Industry B.

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **COMMENTS OF SPRINT COMMUNICATIONS CO., L P** was Hand Delivered or sent by United States first-class mail, postage prepaid, on this the 21st day of July, 1997 to the following parties:

  
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